

Assembly Bill No. 2159

CHAPTER 448

An act to amend Sections 44002, 44015, 44300, 44305, 44307, 44308, 44309, 44310, 45005, 45017, 45030, 45032, 45033, and 45041 of, and to add Sections 45002 and 45022.5 to, the Public Resources Code, relating to solid waste.

[Approved by Governor September 10, 2004. Filed
with Secretary of State September 10, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2159, Reyes. Solid waste facilities: orders.

(1) The existing California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated solid waste management program.

Existing law prohibits a person from operating a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to the act, and requires the enforcement agency to immediately issue a cease and desist order ordering the facility to immediately cease operations and directing the owner or operator of the facility to obtain a permit. Existing law authorizes an enforcement agency to issue a cease and desist order to a person who is taking certain unlawful actions under the act. Existing law requires all orders and determinations issued under that act to take effect immediately after any time period for appeal has expired. However, under existing law, a request for a hearing stays the effect of the order pending completion of all appeals, but a request for a hearing does not stay a provision of the order, or the order as a whole, when there is an imminent and substantial threat to public health and safety or the environment, as specified. Existing law specifies a procedure for the appeal of an order issued by an enforcement agency, including review by a hearing panel. Existing law allows an aggrieved person to file an appeal with the board to review the written decision of a hearing panel and the board is authorized to determine, within 30 days from the date after the appeal is filed, whether to hear the appeal.

This bill would specify that this prohibition on operating without a permit includes the operation of a solid waste facility without a required solid waste facilities permit or the operation of a solid waste facility outside the permitted boundaries specified in a solid waste facilities permit.

The bill would require the order issued by an enforcement agency to require the cessation of all activities for which a permit is required until the permit or other authorization is obtained.

The bill would provide that an order issued under the act takes effect immediately upon service, but would provide that a request for a hearing would stay the order until the date of the completion of all administrative appeals. The bill would provide that a cease and desist order takes effect upon service and that a request for a hearing would not stay the order, under specified conditions.

The bill would revise the provisions for the conduct of hearings to require a written filing and a statement of the issues and would require the enforcement agency to comply with a specified time schedule regarding the conduct of the hearing.

This bill would additionally allow a hearing by an enforcement agency to be conducted by a hearing officer appointed by the governing body of an enforcement agency, pursuant to procedures adopted by that governing body.

The bill would revise the procedures for appealing the decision of the hearing panel or hearing officer to the board and would delete the prohibition on the board from reducing the amount of a civil penalty.

The bill would require the board to hear an appeal within 60 days after the board receives a request for the appeal.

The bill would also make changes with regard to the appeal of a decision on other matters by a hearing panel or hearing officer.

(2) Existing law requires an enforcement agency that receives a complaint concerning a solid waste facility that the agency does not refer to another state agency to take appropriate enforcement action concerning the facility, refer the complaint to the Attorney General, the district attorney, or city attorney, whichever is applicable, or, provide the person who filed the complaint with a specified written statement.

This bill would require an enforcement agency to maintain a record of, and take any action that the enforcement agency is authorized to take regarding, a complaint, referral, or inspection relating to the operation of a solid waste facility or other activity within the jurisdiction of the enforcement agency that is an excluded operation, as specified.

(3) The bill would impose a state-mandated local program by requiring enforcement agencies to take specified solid waste enforcement actions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 44002 of the Public Resources Code is amended to read:

44002. (a) (1) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division.

(2) The prohibition specified in paragraph (1) includes, but is not limited to, the operation of a solid waste facility without a required solid waste facilities permit or the operation of a solid waste facility outside the permitted boundaries specified in a solid waste facilities permit.

(b) If the enforcement agency determines that a person is operating a solid waste facility in violation of subdivision (a), the enforcement agency shall immediately issue a cease and desist order pursuant to Section 45005 ordering the facility to immediately cease all activities for which a solid waste facilities permit is required and desist from those activities until the person obtains a valid solid waste facilities permit authorizing the activities or has obtained other authorization pursuant to this division.

SEC. 2. Section 44015 of the Public Resources Code is amended to read:

44015. A solid waste facilities permit issued or revised under this chapter shall be reviewed and, if necessary, revised at least once every five years.

SEC. 3. Section 44300 of the Public Resources Code is amended to read:

44300. An enforcement agency may, after holding a public hearing before a hearing panel or a hearing officer appointed pursuant to Section 44308 or 44309, in accordance with the procedures set forth in Section 44310, deny a solid waste facilities permit in any of the following cases:

(a) The application is incomplete or otherwise inadequate.

(b) The applicant has not complied with Division 13 (commencing with Section 21000).

(c) The applicant has failed to demonstrate that the facility will meet minimum regulatory standards.

(d) The application contains significant false or misleading information or significant misrepresentations.

(e) The agency determines the applicant has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, or regulations adopted pursuant to this



division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance that has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

SEC. 4. Section 44305 of the Public Resources Code is amended to read:

44305. (a) An enforcement agency may, after holding a public hearing before a hearing panel or a hearing officer appointed pursuant to Section 44308 or 44309, in accordance with the procedures set forth in Section 44310, temporarily suspend a solid waste facilities permit if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to eliminate a significant threat to public health and safety or to the environment.

(b) Notwithstanding subdivision (a), the enforcement agency may suspend a solid waste facilities permit prior to holding a hearing if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to prevent or mitigate an imminent and substantial threat to the public health and safety or to the environment. However, any person aggrieved by an action by an enforcement agency to suspend a permit pursuant to this subdivision may appeal the action to a hearing panel or hearing officer appointed pursuant to Section 44308 or 44309. The hearing panel or hearing officer shall, at the request of the aggrieved party, hear the appeal within three business days of the date when the permit was suspended, or the first day thereafter requested by the aggrieved party in compliance with Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code. The hearing panel or hearing officer shall render its decision on the day the hearing concludes. The hearing panel or hearing officer may affirm, modify, or rescind the permit suspension. A decision of a hearing panel or hearing officer appointed pursuant to Section 44308 or 44309 may be appealed pursuant to Section 45030.

(c) The enforcement agency shall lift the permit suspension as soon as the changed conditions that necessitated the suspension pursuant to subdivision (b) have been corrected.

SEC. 5. Section 44307 of the Public Resources Code is amended to read:

44307. From the date of issuance of a permit that imposes conditions that are inappropriate, as contended by the applicant, or after the taking of any enforcement action pursuant to Part 5 (commencing with Section 45000) by the enforcement agency, the enforcement agency



shall hold a hearing, if requested to do so, by the person subject to the action. The enforcement agency shall also hold a hearing upon a petition to the enforcement agency from any person requesting the enforcement agency to review an alleged failure of the agency to act as required by law or regulation. A hearing shall be held in accordance with the procedures specified in Section 44310.

SEC. 6. Section 44308 of the Public Resources Code is amended to read:

44308. (a) All hearings conducted pursuant to this chapter by the enforcement agency shall be conducted by a hearing officer appointed pursuant to subdivision (d) or a hearing panel appointed pursuant to either of the following procedures:

(1) The governing body may appoint three of its members as the hearing panel.

(2) The chairperson of the governing body may appoint an independent hearing panel consisting of three members.

(b) (1) If an independent hearing panel is appointed pursuant to paragraph (2) of subdivision (a), not more than one member of the governing body shall serve on the hearing panel.

(2) Members of the independent hearing panel shall be selected for their legal, administrative, or technical abilities in areas relating to solid waste management.

(3) At least one member of the independent hearing panel shall be a technical expert with knowledge of solid waste management methods and technology.

(4) At least one member of the independent hearing panel shall be a representative of the public at large.

(5) A member of an independent hearing panel shall serve for a term of four years, and may not serve more than two consecutive terms.

(6) If a member of an independent hearing panel does not complete the member's term, the chairperson of the governing body shall appoint a replacement to serve out the remainder of the unexpired term.

(c) Members of the hearing panel may receive per diem and necessary expenses while conducting the hearing.

(d) The governing body of an enforcement agency may appoint a hearing officer only if the governing body has adopted procedures for making that appointment and has adopted qualifications that the hearing officer is required to meet.

SEC. 7. Section 44309 of the Public Resources Code is amended to read:

44309. All hearings conducted by the board acting as the enforcement agency pursuant to Section 43205 shall be conducted by a



hearing panel of three board members appointed by the chairperson of the board.

SEC. 8. Section 44310 of the Public Resources Code is amended to read:

44310. All hearings conducted pursuant to this chapter shall be based on the following procedures:

(a) (1) The hearing shall be initiated by the filing of a written request for a hearing with a statement of the issues.

(A) If the hearing request is made by the person subject to the action, the request shall be made within 15 days from the date that person is notified, in writing, of the enforcement agency's intent to act in the manner specified.

(B) If the hearing request is made by a person alleging that the enforcement agency failed to act as required by law or regulation pursuant to Section 44307, the person shall file a request for a hearing within 30 days from the date the person discovered or reasonably should have discovered, the facts on which the allegation is based.

(2) The enforcement agency shall, within 15 days from the date of receipt of a request for a hearing, provide written notice to the person filing the request notifying the person of the date, time, and place of the hearing.

(3) If that person fails to request a hearing or to timely file a statement of issues, the enforcement agency may take the proposed action without a hearing or may, at its discretion, proceed with a hearing before taking the proposed action.

(4) The enforcement agency shall file its written response to the statement of issues filed by the person requesting the hearing with the hearing panel or the hearing officer, and provide a copy to the person requesting the hearing, not less than 15 days prior to the date of the hearing.

(b) The hearing shall be held no later than 30 days after receiving the request for a hearing on the merits of the issues presented, in accordance with the procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Within five days from the conclusion of the hearing, the hearing panel or hearing officer shall issue its decision. The decision shall become effective as provided in Section 45017.

SEC. 9. Section 45002 is added to the Public Resources Code, to read:

45002. An order issued pursuant to this part or Part 4 (commencing with Section 43000) shall provide the person subject to that order with



a notice of that person's right to appeal pursuant to Part 4 (commencing with Section 43000) and Part 6 (commencing with Section 45030).

SEC. 10. Section 45005 of the Public Resources Code is amended to read:

45005. A person who is operating, or proposes to operate, a solid waste facility, or who is disposing of solid waste in an unauthorized manner, or who owns a solid waste facility and causes or permits the operator to operate the facility (1) in violation of a solid waste facilities permit or in violation of this division, or any regulation adopted pursuant to this division, or (2) without a solid waste facilities permit, or (3) in a manner that causes or threatens to cause a condition of hazard, pollution, or nuisance shall, upon order of the enforcement agency, cease and desist any prohibited activities.

SEC. 11. Section 45017 of the Public Resources Code is amended to read:

45017. (a) (1) Except as provided in paragraphs (2) and (3), all orders and determinations issued pursuant to this part or Part 4 (commencing with Section 43000) shall take effect immediately upon service, except that a request for a hearing pursuant to Section 44307 shall stay the effect of any or all provisions of the order until the date of the completion of all administrative appeals.

(2) Any provision of an order issued under this part or Part 4 (commencing with Section 43000) shall take effect upon service on the affected person if the enforcement agency finds that the actions or inactions associated with that provision may pose an imminent and substantial threat to the public health and safety or to the environment, and a request for a hearing shall not stay the effect of that provision of the order pending completion of all administrative appeals.

(3) A cease and desist order issued pursuant to Section 44002 shall take effect upon service on the affected person and a request for a hearing shall not stay the effect of the order, notwithstanding the completion of any administrative appeal, if the cease and desist order is issued to a person operating a solid waste facility on a property for which a solid waste facilities permit is required, and one of the following applies:

(A) The person has not applied for any solid waste facilities permit for that property before the date of the issuance of the cease and desist order.

(B) The person has been denied a solid waste facilities permit for the operation on that property for which a solid waste facilities permit is required.

(b) For purposes of this section, service may be effected by any of the following:

(1) Personal delivery.



(2) First-class United States mail, if it is made by certified mail with a return receipt requested.

(3) Express delivery by a national express mail service that provides evidence of delivery.

SEC. 12. Section 45022.5 is added to the Public Resources Code, to read:

45022.5. An enforcement agency shall maintain a record of, and take any action that the enforcement agency is authorized to take regarding, a complaint, referral, or inspection relating to the operation of a solid waste facility, solid waste disposal site, or solid waste handling activity, including, but not limited to, those activities that do not require a solid waste facilities permit, within its jurisdiction.

SEC. 13. Section 45030 of the Public Resources Code is amended to read:

45030. (a) A party to a hearing held pursuant to Chapter 4 (commencing with Section 44300) of Part 4 may appeal to the board to review the written decision of the hearing panel or hearing officer or to review the petitioner's request in the instance of a failure of a hearing panel or hearing officer to render a decision or consider the request for review, or a determination by the governing body not to direct the hearing panel or hearing officer to hold a public hearing, under the following circumstances:

(1) Within 10 days from the date of issuance of a written decision by a hearing panel or hearing officer.

(2) If no decision is issued, within 45 days from the date a request for a hearing was received by the enforcement agency for which there was a failure of a hearing panel or hearing officer to render a decision or consider a petitioner's request pursuant to Section 44310.

(b) An appellant shall commence an appeal to the board by filing a written request for a hearing together with a brief summary statement of the legal and factual basis for the appeal.

(c) Within five days from the date the board receives the request for a hearing, the board shall schedule a hearing on the appeal and notify the appellant and all other parties to the underlying proceeding of the date of the board hearing.

(d) The board shall hear the appeal within 60 days from the date the board received the request for the appeal.

(e) The board shall conduct the hearing on the appeal in accordance with the procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of the Government Code.

SEC. 14. Section 45032 of the Public Resources Code is amended to read:



45032. (a) In the board's hearing on the appeal, the evidence before the board shall consist of the record before the hearing panel or hearing officer, relevant facts as to any actions or inactions not subject to review by a hearing panel or hearing officer, the record before the local enforcement agency, written and oral arguments submitted by the parties, and any other relevant evidence that, in the judgment of the board, should be considered to effectuate and implement the policies of this division.

(b) The board may only overturn an enforcement action, and any administrative civil penalty, by a local enforcement agency if it finds, based on substantial evidence, that the action was inconsistent with this division. If the board overturns the decision of the local enforcement agency, the hearing panel, or the hearing officer, or finds that the enforcement agency has failed to act as required, the board may do both of the following:

(1) Direct that the appropriate action be taken by the local enforcement agency.

(2) If the local enforcement agency fails to act by the date specified by the board, take the appropriate action itself.

SEC. 15. Section 45033 of the Public Resources Code is amended to read:

45033. A failure to appeal to the hearing panel, the hearing officer, or the board for review, or the refusal of the local enforcement agency, a hearing panel, the hearing officer, or the board to hear an appeal does not preclude a person from filing an action with the superior court to contest any action or inaction of the local enforcement agency or the board.

SEC. 16. Section 45041 of the Public Resources Code is amended to read:

45041. The evidence before the court shall consist of the records before the hearing panel or hearing officer and the board, if any, including the enforcement agency's records, and any other relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the policies of this division.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

